

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	
LOCAL 2,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 98-008
)	
CITY OF OSAGE BEACH,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of International Union of Operating Engineers, Local 2 (hereinafter referred to as the Union) to represent certain employees of the City of Osage Beach (hereinafter referred to as the City). The Union seeks to represent a bargaining unit consisting of the Sanitation Clerk and the Transportation Records Clerk. A hearing on the matter was held on March 3, 1998 in Jefferson City, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Acting Chairman Ronald Miller, Employee Member LeRoy Kraemer, and Employer Member Lois VanderWaerd. At the hearing the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. The case transcript and briefs were subsequently supplied to Chairman John Birch who participated in the Board's decision. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

The City is a municipality within the State of Missouri. The Mayor, Jim Schneider, is at the top of the City's organizational structure. Next in the organizational hierarchy is the City Administrator. At the time of hearing, that position was vacant. The Assistant City Administrator, Paula Hertwig-Hopkins, normally reports to the City Administrator. With the position of City Administrator vacant, Ms. Hopkins currently reports directly to the Mayor. The Assistant City Administrator acts as the City Administrator's designee over the Personnel Department and Human Resources Department. Her job duties include administering the City's Personnel Policies.

All city employees are subject to the City's Personnel Policies. In addition, all city employees receive the same fringe benefits. As the City Administrator's designee, Ms. Hopkins approves all employee evaluations and merit reviews. She approves all leaves of absences, suspensions, transfers, reclassifications and discharges. She handles all employee grievances. She also approves all job postings. The Assistant City Administrator is responsible for filing employee injury reports and approving disability leave. She is also responsible for employee benefit programs such as the tuition reimbursement program and the educational incentive program.

The City is comprised of several departments. One such department is the Public Works Department. The Public Works Department is comprised of the Street Department, the Sanitation Department, and the Parks Department. The Public Works Department is currently under the supervision of the Acting Director of Public Works, Rick King. The Street Department is under the supervision of the Roads Foreman, Steve Kays. Mr. Kays reports to Rick King. Rick King reports to the City Engineer, John Ballard.

Prior to October, 1996, the Street Department and Sanitation Department were located in the old City Hall Building. In October, 1996, the Street Department, Sanitation Department and Parks Department were moved to the Public Works Building located at 5757 Chapel Road, Osage Beach, Missouri. The Assistant City Administrator and Executive Secretary were also located in the Public Works Building.

On February 20, 1997, the Union filed a representative petition, Public Case No. R 97-023, to represent a unit consisting of Public Works Department employees. The City and the Union reached an agreement to exclude the Sanitation Clerk and Transportation Records Clerk from that unit. The Union subsequently won the representation election and on May 19, 1997, the Union was certified as the exclusive bargaining representative of an appropriate unit consisting of "Sanitation Worker I, Sanitation Worker II, Assistant Wastewater Manager, Road Worker I, Road Worker II, Roads Foreman, Wastewater Collection Manager, and Public Worker I, excluding supervisors, managers, office clerical employees (General Clerical and Records Clerk) and all other employees." The unit currently consist of thirteen of the City's public works employees.

These thirteen members of the Public Works bargaining unit wear uniforms and operate heavy equipment such as backhoes. They also operate trucks. In addition, they use wrenches, screwdrivers and other similar hand tools. Lastly, they perform task such as repairing pumps.

In June 1997, construction on a new City Hall building was completed. The new City Hall is located at 1000 City Parkway, Osage Beach, Missouri. The new City Hall is approximately three fourths of a mile from the Public Works Building. In June 1997, the employees were moved from the old City Hall to the new City Hall. The Assistant City

Administrator was also moved from the Public Works Building to the new City Hall. The City also hired the City Engineer. His office is located in the new City Hall.

On August 18, 1997, the Union filed the current petition to represent a unit consisting of the Sanitation Clerk and the Transportation Records Clerk. On September 10, 1997, the Transportation Records Clerk was moved to the new City Hall. At the time of the hearing, the Sanitation Clerk was the only clerical position located in the Public Works Building and the only clerical position not located in the new City Hall. The City has decided to move the Sanitation Clerk to the new City Hall as soon as a new City Administrator is hired.

Judith Smith has been the Sanitation Clerk within the City's Public Works Department since January 10, 1994. The Sanitation Clerk reports to the Acting Director of Public Works, Rick King. The Sanitation Clerk answers all Public Works Department telephone calls and does all radio correspondence with Public Works Department workers. The Sanitation Clerk also handles telephone calls and radio correspondence for the Parks Department. Currently, if the Sanitation Clerk is unable to answer the telephone, calls can be forwarded to City Hall. Other Sanitation Clerk duties include writing reports and ordering supplies. The Sanitation Clerk answers inquiries and interacts with contractors, vendors and the general public. The Sanitation Clerk prepares purchase orders and receives invoices. She forwards the invoices to the Accounts Payable Clerk at City Hall. The Sanitation Clerk also interacts with the Payroll Clerk at City Hall regarding payroll issues. Occasionally, the Sanitation Clerk may interact with the Building Inspector's Office concerning sewer inspections. The Sanitation Clerk works with a typewriter, computer, fax machine and adding machine.

Nothing in the Sanitation Clerk's job qualifies her for other non-clerical jobs in the Public Works Department. She does not operate heavy equipment. She also does not

perform task such as repairing pumps. The skills possessed and work performed by the Sanitation Clerk are essentially the same as the skills possessed and work performed by the other City Hall office clerical.

Patsy Parrack has been the Transportation Records Clerk within the City's Public Works Department since May 20, 1996. The Transportation Records Clerk position was moved to the new City Hall on September 10, 1997. Prior to being moved to City Hall, the Transportation Records Clerk performed many of the same task as the Sanitation Clerk. Her duties included answering the telephone, ordering supplies, typing, filing, updating on the computer all roads, street lights, culverts and signs. The Transportation Records Clerk also performed typing for the Parks Director, Jerry Boark and the Assistant City Administrator, Paula Hertwig-Hopkins. Since being moved to City Hall, the Transportation Records Clerk does not use the radio. She has less interaction with the Roads Foreman, Steve Kays. She also has less interaction with Street Department and Sanitation Department workers.

The Transportation Records Clerk's current job duties and responsibilities include filing, record keeping, processing invoices, correspondence, answering the telephone, typing and making appointments for people. She also types, makes copies and proofreads work for the City Engineer. Recently, the Transportation Records Clerk has performed some work for the Assistant City Administrator. The Transportation Records Clerk works with a typewriter, computer, fax machine and adding machine. She interacts with the Accounts Payable Clerk regarding purchase orders and invoices. She also serves as back-up for other office clerical in her area at City Hall.

The Transportation Records Clerk reports to the Roads Foreman, Steve Kays. She also reports to the City Engineer. Occasionally, the Transportation Records Clerk will go with the Roads Foreman to check roads. In addition, she will occasionally

accompany the City Engineer. However, nothing in the Transportation Records Clerk's job qualifies her for other non-clerical jobs in the Public Works Department. She does not operate heavy equipment. She also does not perform tasks such as repairing streets, lights or pumps. The skills possessed and work performed by the Transportation Records Clerk are essentially the same as the skills possessed and work performed by the other City Hall office clerical.

Including the Sanitation Clerk and the Transportation Records Clerk, the City has sixteen office clerical employees. Three Records Clerks, Heather Gage, Linda Crowder and Bob Wilson work in the front lobby area of City Hall. These clerks provide office clerical support for the Police Department. They greet the public, answer telephones, answer public inquiries, and type letters, memos and correspondence. As part of their job duties, Heather Gage and Linda Crowder process tickets and citations issued by the City. As a part of his job duties, Bob Wilson processes evidence and maintains records concerning that evidence. These three clerks routinely use copy machines, typewriters, fax machines, adding machines, postage meters and computers.

The Administrative Assistant to the Chief of Police, Rebecca Livingston, provides similar clerical support for the Police Department. She is also located in City Hall and her duties include answering the telephone, answering citizen inquiries, record keeping maintaining files and typing correspondence, memos and reports. She uses similar office machines as the three abovementioned Records Clerks. Additionally, as part of her duties Ms. Livingston types purchase orders and receives invoices concerning items purchased by the Police Department. She interacts with the Accounts Payable Clerk regarding payment of those invoices.

The remaining City office clerical are located at City Hall in a clerical pool area to the left of the front lobby. Several of these office clericals report to the City Treasurer,

Dale Klenke. The Accounts Payable Clerk, Patricia Schranz, reports to the Treasurer. The Accounts Payable Clerk processes all invoices received from the various City departments. She also prepares the "billing list" for the Board's review and authorization of payment. The Payroll Clerk, Rose Hinds, also reports to the Treasurer. The Payroll Clerk handles the entire payroll for the City. She also handles sewer billing and collections for the Sanitation Department. In addition, the Payroll Clerk prepares the agenda for the public utilities committee and takes minutes at the committee meetings. She also types correspondence and memos for the City Treasurer.

The Billing Clerk, Sue Tidwell, reports to the Treasurer. She performs billing and collection for the Ambulance Department. She also keeps files and records. The Billing Clerk performs typing, prepares purchase orders and receives invoices. She works with a computer and interacts with the Accounts Payable Clerk regarding payment of invoices.

The Accounts Receivable Clerk, Karri Badolato, reports to the Treasurer and handles the accounts receivable for the City. She also handles some invoices, works with the City's financial records and reconciles the City's bank statements. Further, the Accounts Receivable Clerk acts as a back-up for the sewer billing and collecting as well as for the front desk receptionist. The Accounts Receivable Clerk has also filled in for the Sanitation Clerk.

The Accounts Payable Clerk, Payroll Clerk, Billing Clerk and Accounts Receivable Clerk all work in the clerical pool area within City Hall and use the same small business machines as the three Records Clerks, the Sanitation Clerk and the Transportation Records Clerk.

Four additional office clerical, Helen Eidson, Judy Dunkin, Anita Salisbury and Sharon Schnebly, work in this same area and report to the City Clerk, Diane Warner.

Ms. Eidson is the Court Administrator and keeps all Court records and files. She prepares memos and correspondence. On occasion, she has been asked to take minutes for various City Boards. Ms. Eidson also backs up the front receptionist.

Judy Dunkin answers telephone calls from the public regarding public documents and answers questions about the City's calendar. She works at the front desk answering telephone calls, keeping records, and preparing files, memos and correspondence for the City Clerk.

Anita Salisbury is a clerk and works in the same clerical pool area. She prepares the agenda and minutes for the Park Commission meetings and the Wellness and Fitness Advisory Committee meetings. She also answers telephones, and prepares records, memos and correspondence. Ms. Salisbury is located near the lobby and serves as back-up for the front receptionist and for Sharon Schnebly regarding sewer payments.

Sharon Schnebly is the front receptionist and answers telephone calls, answers inquiries from the general public, directs telephone calls to other city departments, and prepares memos and correspondence. She also receives sewer payments from the public and enters the payments on the computer.

All four clerks that report to the City Clerk are in the clerical pool area within City Hall. They also use, the same small business machines as the other clerical employees.

Cheryl Tuggle reports to the Building Official, City Planner and City Engineer. Her duties include record keeping, filing, and preparing memos and correspondence. She also receives and processes building permits and sewer application permits. In addition, she collects the permit fees and the impact fees. Ms. Tuggle uses the same business machines as the other clerical employees.

Karen Girdley is an Administrative Assistant. She reports to the Assistant City Administrator. Her duties include typing memos and letters. Ms. Girdley uses the same business machines as the other clerical employees.

Finally, all sixteen City office clerical employees are on the same pay plan. They are paid by the hour, receive overtime, and have the same payday. All sixteen office clerical employees are eligible for annual reviews and merit reviews. Further, they are eligible for leaves of absence. They have the same grievance procedure and are on the same medical insurance plan. None of the sixteen office clerical employees are currently represented by a union. All City employees have equal access to job postings. However, clerical employees generally only bid for other clerical positions.

CONCLUSIONS OF LAW

The Union seeks to represent a new bargaining unit consisting solely of the Sanitation Clerk and the Transportation Records Clerk. The Union will not proceed to an election in any unit other than the petitioned for unit. The City contends that the petitioned for bargaining unit is inappropriate as an attempt to carve out two office clerical out of an overall unit of approximately sixteen office clerical. As the petitioning party, the Union has the burden of proving the appropriateness of the bargaining unit. *Central County Emergency 911 v. International Association of Firefighters Local 2665*, No. WD 54519, slip op. at 3 (Mo. App. W.D., April 28, 1998).

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994 which provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a “clear and identifiable community of interest” nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990) are:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills, and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

An analysis of the factors in this case demonstrates that the Sanitation Clerk and the Transportation Records Clerk do not have such special and distinct interests as would outweigh and override the community of interest shared with the other clerical employees of the city. See, *National Labor Relations Board v. Harry T. Campbell Sons’*

Corporation, 407 F.2d 969, 976 (4th Cir. 1969)(*Quoting, Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)).

All sixteen office clerical employees are paid by the hour. They are on the same City pay plan. All sixteen office clerical employees receive overtime and have the same payday.

No evidence was introduced at the hearing to show a significant difference between the employment benefits and working conditions enjoyed by the Sanitation Clerk and the Transportation Records Clerk and the other fifteen office clerical employees. All City employees have the same fringe benefits. In addition, all sixteen office clerical employees share the same general working conditions. None of the sixteen clerical employees wear a uniform. They are on the same pay plan. All sixteen office clerical employees are eligible for annual reviews and merit reviews. They are eligible for leaves of absence. All sixteen office clerical employees have the same grievance procedure and are on the same medical insurance plan. They all use the same types of business machines. Lastly, as with all City employees, the sixteen clerical employees, have equal access to job postings.

Furthermore, there was no evidence introduced at the hearing to show a significant difference between the kind of work performed by the Sanitation Clerk and the Transportation Records Clerk and the kind of work performed by the other fifteen office clerical employees. All sixteen office clerical employees perform traditional office clerical jobs using standard types of business machines. The Sanitation Clerk does use a radio to communicate with the Public Works employees in the trucks. However, there was no evidence to show that this practice will continue once the Sanitation Clerk is moved to City Hall. Prior to being moved to City Hall, the Transportation Records Clerk

used the radio to communicate with Public Works employees. However, the Transportation Records Clerk no longer uses the radio.

There was no evidence introduced at the hearing to show a significant difference between the qualification, skills and training possessed by the Sanitation Clerk and the Transportation Records Clerk and the qualification, skills and training possessed by the other fifteen office clerical employees. It is significant that nothing in the jobs of either the Sanitation Clerk and the Transportation Records Clerk would qualify them for a non-clerical position within the Publics Works Department.

Furthermore, there appears to be frequent contact and interchange between the office clerical employees. All of the clerical employees, except the Sanitation Clerk, work in close proximity within City Hall. They are available to pick up each others telephones and to cover for each other when necessary. While the Sanitation Clerk is in the Public Works Building, she still has significant contact with the Accounts Payable Clerk and the Payroll Clerk. In addition, she still has significant contact with the Transportation Records Clerk.

All of the clerical employees, except the Sanitation Clerk, work in very close proximity within City Hall. The Sanitation Clerk works in the Public Works Building approximately three fourths of a mile from City Hall. However, the City has decided to move the Sanitation Clerk to City Hall.

There is significant integration within the City's processes and within the duties assigned to the clerical employees. For example, the Sanitation Clerk performs most of the clerical functions for the Sanitation Department. However, the Payroll Clerk performs the sewer billing and collection. In addition, three other clerical employees receive and enter sewer payments. Still yet another clerical employee, Ms. Tuggle, receives sewer application permits and collects the permit and impact fees. The

Transportation Clerk and Accounts Receivable Clerk have both filled in for the Sanitation Clerk when she had to be gone. Lastly, the telephones in the Public Works Building can be forwarded to City Hall and answered by the clerical employees located in City Hall. There are many other examples of integration which the Board could cite such as all purchases are handled by the various clerical employees, but all purchases are ultimately forwarded to the Accounts Payable Clerk. Additional examples of integration would needlessly lengthen this opinion.

All sixteen clerical employees do not have the same immediate supervisor. However, this fact does not preclude a finding that all sixteen clerical employees share a community of interest. *See, California Physicians' Service d/b/a California Blue Shield v. Professional, Office and Industrial Union, affiliated with Marine Engineers' Beneficial Association, (AFL-CIO)*, 178 NLRB 116 (1969). Furthermore, the City's Personnel Policies apply to all City employees. The Assistant City Administrator approves all employee reviews, merit reviews, leaves of absences, disciplinary suspensions, terminations, transfers and job reclassifications. She also handles all employee grievances.

There was no evidence introduced at the hearing which shows that the Sanitation Clerk and Transportation Records Clerk have a significantly different relationship to the City's administrative organization than the relationship of the other clerical employees. All sixteen of the clerical employees perform traditional clerical jobs using similar business machines. They are on the same City pay plan. They have the same fringe benefits. They are subject to the same Personnel Policies.

Lastly, none of the clerical employees are represented by a union. When the representation petition was filed in Public Case No. 97-023, the Sanitation Clerk and Transportation Records Clerk were originally included in the petition as part of the Public

Works bargaining unit. However, prior to the representation election, the City and the Union negotiated the Sanitation Clerk and Transportation Records Clerk out of the unit. In the present case, the Union has not petitioned to add the Sanitation Clerk and the Transportation Records Clerk to the Public Works bargaining unit. That question is not before the Board and the Board declines to address that issue. Instead, the Union seeks a separate unit consisting of solely the Sanitation Clerk and the Transportation Records Clerk. However, from the facts in this case, it is apparent that such a unit is inappropriate.

Based upon the foregoing, the Sanitation Clerk and the Transportation Records Clerk do not have such special and distinct interests that outweigh and override the community of interest shared by all sixteen of the City's clerical employees. Therefore, a unit consisting solely of the Sanitation Clerk and the Transportation Records Clerk is not an appropriate unit.

ORDER

The State Board of Mediation finds that a unit consisting of the Sanitation Clerk and the Transportation Records Clerk is not an appropriate unit. Accordingly, the petition is hereby dismissed.

Signed this 6th day of June, 1998.

STATE BOARD OF MEDIATION

(SEAL)

/s/ John Birch
John Birch, Chairman

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Lois Vander Waerd
Lois Vander Waerd, Employer Member